sample of systems selected by the Commission as part of its September 1992 survey and the systems included in its September 1993 rate survey.[67] As was found in the 1990 Cable Report, in general, the carriage percentages of vertically integrated networks are higher in systems with an ownership interest than in systems without an ownership interest.[68] But the four largest vertically integrated MSOs -- Viacom, TCI, Time Warner and Cablevision Systems -- are generally more likely than non-vertically integrated cable operators to carry the most popular cable networks in which they do not have an ownership interest.[69] For example, according to EI, the carriage percentage of Arts and Entertainment Network by the foregoing four MSOs, all of which do not have an ownership interest in A&E, is 85.2 percent in the sample. By contrast, the carriage percentage of the 222 cable systems in the sample that have no ownership interest in any network is only 74.8 percent.

Moreover, although the EI study results generally reaffirm the 1990 Report findings, it is significant that today "a vertically integrated MSO is even *more* likely to carry networks in which it has no ownership interest relative to a non-integrated cable operator than was the case five years ago."[70]

The following is a list of the updated tables in the Economists, Inc. report and the corresponding table in the 1990 Cable Report:

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[67] The Klein Study data was based on a stratified random sample of 400 cable systems conducted in 1988 and 1989.

[68] See EI Report Table 5.

[69] See EI Report Tables 6 and 7.

[70] EI Report at 7.

	Economists Inc. Report	APPENDIX G
National Cable Programming Networks with Cable Operator Ownership/Equity	Table 1	Table IV
National Cable Programming Services with No Cable Operator Ownership Interest	Table 2	Table V
Vertical Connection Between Major Cable Programming Networks and Cable System Operators	Table 3	Table VII
Vertical Integration: Top Fifteen Major Cable Programming Networks (By Primetime Rating)	Table 4	Table VIII
MSO Carriage of Owned Networks	Table 5	Table XIII
Carriage by Vertically Integrated MSOs of Networks in Which They Have No Ownership Interests	Table 7	Table XIV

C. Program Access

The FCC's program access rules, which require cable programming services to made be available to all multichannel video programming distributors on fair terms and non-discriminatory conditions, has facilitated increased competition in the video marketplace.[71] By subjecting cable

71 As noted earlier, increased channel capacity and the variety of new outlets has lured many new cable networks to the marketplace. See e.g., "New cable channels join the

programming business practices to close scrutiny, these measures provide a more than adequate remedy to instances of unfair conduct by vertically-integrated programmers vis-à-vis their own affiliate entities. The rules reflect, however, an awareness that Congress did not prohibit all price differentials and exclusive contracts, but only those cases where such actions are discriminatory.

The rules are still quite new and the Commission is refining them through the enforcement process. To date, the Commission has only ruled on two complaints concerning exclusive contracts, including a decision to deny a cable operator program exclusivity as against a competing MMDS operator.[72]

III. ANALYSIS OF COMPETITION IN VIDEO MARKETPLACE

The 1992 Cable Act defines "effective competition" based on three tests, notably the presence of multichannel video competition in the franchise area. Specifically, section 623 of the Act exempts a cable system from rate regulation if its franchise area is served by at least two unaffiliated multichannel video distributors, each of which offers comparable programming to at least 50 percent of the households in the franchise area; and the number of households served by the distributor(s) other than the largest one exceeds 15 percent of the households in the franchise area. This definition subjected virtually every cable system in the country to regulation.

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crowd", Broadcasting & Cable, May 16, 1994, at 40; "New cable networks ready for launch", Broadcasting & Cable, April 11, 1994, at 24.

72 In the Matter of Time Warner Cable, Petition for Public Interest Determination Under 47 C.F.R. § 76.1002(c)(4) Relating to Exclusive Distribution of Courtroom Television, Memorandum Opinion & Order, CSR-4231-P, released June 1, 1994..

Recognizing the important role of competition in the regulation of cable television, however, Congress directed the Commission, as the expert agency, to analyze the state of competition in the video marketplace on an annual basis and to report on the continuing need for regulation of the cable industry. In the first of its annual inquiries, the Commission appropriately recognizes that "the contribution of the over-the-air television service to the development of effective competition to cable service warrants inclusion in our analysis."[73]

But while the Commission acknowledges that over-the-air broadcasting competes with cable in the video distribution market, it considers broadcasting's impact only in combination with other video delivery media. As we have seen, multichannel competition to cable is burgeoning on all fronts -- direct-to-home satellite, wireless cable, local exchange carriers. But there is demonstrable evidence that multiple over-the-air broadcast signals alone can and do exert a constraining effect on cable rates. The Arthur D. Little study shows that among larger cable systems (those serving more than 5,000 subscribers) where many broadcast signals are available, the price differential between competitive and non-competitive systems is zero. The lack of a statistically significant difference in the competitive price differential among larger cable systems was confirmed in last year's Economists Inc. study as well. Undoubtedly, the presence of multiple broadcast channels in large markets acts as a price constraint.

The empirical evidence of the competitive impact of over-the-air broadcasting on cable is not surprising given the Congressional finding in

[73] NOI at para. 50.

the 1984 Cable Act, reaffirmed by the Commission in 1991, that "a sufficient complement of over-the-air signals provides an acceptable competitive check on the ability of cable operators to raise their prices for basic cable service."[74] Indeed, the Commission's independent analysis of the effective competition standard 36 months ago determined that the availability of six unduplicated broadcast signals was sufficient to allow consumers adequate and significant programming choices and to prevent the basic tier offering from becoming a source of market power for the operator.[75]

NCTA submits that when the Commission evaluates the competitive effect of multiple broadcast signals on larger cable systems in today's market, the 1992 effective competition standard falls far short of marketplace reality. Broadcast television is an effective competitor to cable in major markets. Therefore, we urge the Commission to recommend in its report to Congress that the effective competition standard should be reassessed and revised to include a broadcast signal availability test.

Furthermore, if Supreme Court precedent in other industries is to be believed, the presence of competitors on the sidelines or in the market, such as nationwide DBS and the increasingly national wireless and video dialtone systems, do constrain prices.[76] It is illogical to assume that rate regulation

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[74] Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, Report and Order and Second Further Notice of Proposed Rulemaking, MM Docket Nos. 90-4 and 94-1296, 6 FCC Rcd 4545, released July 12, 1991.

[75] Id. at para. 22.

[76] U.S. v. Falstaff Brewing Corporation, 410 U.S. 526, 559 ("The existence of an aggressive, well equipped and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter an oligopolistic market [is] a

is crucial when 14.9% of the TV households are served by multichannel competitors but is utterly irrelevant at 15%. The fact is competition constrains prices well before 15% of the market has shifted to a cable competitor. With a nationwide DBS service, its availability should act as a check on cable prices for satellite-delivered services.

Unless the Commission itself believes that 15% is as magical a measurement as the Cable Act suggests, the FCC should provide the expert analysis to Congress to reduce the threshold of when "effective" competition is present, to account for the effects of effective multichannel providers well before 15% of the market is lost. And the FCC should account in its report for the contribution broadcast stations make to constraining prices in larger markets. It is unfair to ignore the constraining effects of these factors to justify rate regulation in circumstances, where market forces long earlier than the 15% moment have made it unnecessary.

IV. GATHERING INFORMATION FOR FUTURE REPORTS

In preparation for the future status reports on video competition, the Commission seeks guidance on the best methods for gathering more comprehensive and up-to-date information. For purposes of monitoring future changes in cable system ownership, the Commission may rely on readily available industry publications, such as Paul Kagan Associates Inc.'s annual Cable TV Financial Databook, monthly Cable TV Investor newsletter, Cable TV Programming newsletter and other relevant Kagan material. These publications are generally relied upon in the industry as reliable sources of statistical information on subscribership according to

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substantial incentive to competition which cannot be underestimated," citing United States v. Penn-Olin Chemical Co., 378 U.S. at 174).

homes passed and other indicia. This material should be useful to the Commission in keeping track of any cable companies approaching the 30 percent threshold, as well as obtaining up-to-date information on vertical ownership interests.

Information regarding the share of subscribers attributable to the top 50 MSOs may be obtained from corporate annual reports and annual 10-K filings required by the Securities and Exchange Commission. NCTA also produces a report entitled Cable Television Developments three times per year, which contains wide-ranging statistical information about the industry and a directory of the top 50 MSOs and a directory of cable networks. Furthermore, NCTA compiles a variety of statistical reports on the cable industry on a periodic basis that may be useful to the Commission in future reports.

CONCLUSION

For the foregoing reasons, the Commission should recommend in its first annual report to Congress on the status of competition that the 1992 Cable Act definition of "effective competition" should be revised to reflect the competitive impact of over-the-air broadcasting on cable television.

Respectfully submitted,

NATIONAL CABLE TELEVISION ASSOCIATION, INC.

By Loretta P. Polk

Daniel L. Brenner
Loretta P. Polk

Cynthia Brumfield, Vice President
Gregory Klein, Director
Economic Analysis

Research & Policy Analysis

ITS ATTORNEYS
1724 Massachusetts Avenue, NW
Washington, DC 20036
(202) 775-3664

June 29, 1994

ATTACHMENT A

SECTION 214 VIDEO DIALTONE APPLICANTS 06/20/94

File	Date Filed/ Granted	Status	Name	Community	Subscribers	Third Party Providers
6834	03/25/93	granted	Bell Atlantic	Arlington, VA	2,000	Bell Atlantic Video Services
6836	06/29/93	granted	New York Telephone	New York City, NY	2,500	Time Warner Cable of NYC Paragon Cable of Manhattan Liberty Cable Company Urban Communication Transport
6838	10/19/93	pending	New Jersey Bell Telephone	Florham Park, NJ Madison Borough, NJ Chatham Borough, NJ	11,700	Sammons Communications
6840	10/19/93	pending	New Jersey Bell Telephone	Dover Township, NJ	38,000	Future Vision
6858	11/12/93	granted	Southern NE Telephone	West Hartford, CT	1,500	n/a
6867	03/25/94	granted	Rochester Telephone	Rochester, NY	120	USA Video Corporation
6868	12/22/93	granted	US West	Omaha, NE	62,500	n/a
6912	12/20/93	pending	Bell Atlantic	Montgomery Co., MD Alexandria, VA	300,000	n/a
6913	12/20/93	pending	Pacific Bell	Orange Co., CA	210,000	n/a
6914	12/20/93	pending	Pacific Bell	South San Francisco, CA	490,000	n/a
6915	12/20/93	pending	Pacific Bell	Los Angeles, CA	360,000	n/a

SECTION 214 VIDEO DIALTONE APPLICANTS

File	Date Filed/ Granted	Status	Name	Community	Subscribers	Third Party Providers
6916	12/20/93	pending	Pacific Bell	San Diego, CA	250,000	n/a
6919	01/10/94	pending	US West	Denver, CO	300,000	n/a
6921	01/20/94	pending	US West	Portland, OR	132,000	n/a
6922	01/20/94	pending	US West	Minneapolis-St. Paul, MN	292,000	n/a
6926	01/31/94	pending	Ameritech	Detroit, MI	232,000	n/a
6927	03/11/94	pending	Ameritech	Columbus, OH Cleveland, OH	262,000	n/a
6928	01/31/94	pending	Ameritech	Indianapolis, IA	115,000	n/a
6929	01/31/94	pending	Ameritech	Chicago, IL	501,000	n/a
6930	01/31/94	pending	Ameritech	Milwaukee, WI	146,000	n/a
6944	03/17/94	pending	US West	Boise, ID	90,000	n/a
6945	03/17/94	pending	US West	Salt Lake City, UT	160,000	n/a

SECTION 214 VIDEO DIALTONE APPLICANTS

File	Date Filed/ Granted	Status	Name	Community	Subscribers	Third Party Providers
6949	04/13/94	pending	Puerto Rico Telephone Co.	Puerto Rico	380	n/a
6955	05/23/94	pending	Contel of Virginia dba GTE VA	Manassas, VA	90,000	n/a
6956	05/23/94	pending	GTE Florida	Pinellas Co., Pasco Co., FL (near Tampa/ St. Petersburg)	476,000	n/a
6957	05/23/94	pending	GTE California	Ventura Co., CA	122,000	n/a
6958	05/23/94	pending	GTE Hawaiian Telephone Co.	Honolulu, HA	296,000	n/a
6966	06/17/94	pending	Bell Atlantic	Baltimore, MD	303,648	Bell Atlantic Video Service
				Northern New Jersey	512,286	
				Philadelphia/Delaware Valley	708,378	
				Pittsburgh, PA	271,942	
				Tidewater/Hampton Rds.,VA	169,303	

Source: Greg Lipscomb, Video Dialtone Applications Status List (1994).

6/20/94

Video Dialtone Applications Status List

Caution: This list is an unofficial attempt to help video dialtone researchers. It is not an official FCC document. Some of the details have not been independently corroborated. For copies of the applications and comments, and updates of this list, contact I-T-S Duplicating, 202/857-3800, fax 857-3821. Applications and comments are available for review, under the WPC number, in the FCC public reference room at Room 6218, 2025 M Street, NW, Wash DC, phone 202/634-1512 (Hours: 8:30-12:30, 1:30-3, M-Thurs). A separate set of the applications, and copies of this list, are available for review in Room 6008, 2025 M Street.

Greg Lipscomb, Room 544, 1919 M St., 202/634-4216, fax 634-6625

As of this date twenty-eight video dialtone applications[1] have been filed by nine telephone companies, as follows:[2] [3]

1. C&P Telephone, Arlington Virginia, one-year FCC authorization granted on March 25, 1993 [8 FCC Rcd 2313 (1993)]. Technical trial to 280 subscribers is underway and is due to end March 23, 1994. Bell Atlantic was granted Special Temporary Authority on 3/21/94 to extend the technical trial for six months, until 9/25/94. An amendment to permit a market trial for 2000 homes has been received. Public notice period on the amendment ended December 27, 1993. Three oppositions were filed. (WPC 6834)

2. New York Telephone, New York City, authorization granted June 29, 1993 [8 FCC Rcd 4325 (1993)]. Technical trial was launched in January, 1994. Petition for Reconsideration has been filed by the City of New York, and is being reviewed by the Common Carrier Bureau. Project is scheduled to offer trial services to 2,500 apartments in three Manhattan apartment buildings. (WPC 6836)

3. Southern New England Telephone, West Hartford, Connecticut, authorization for a technical and marketing trial was unopposed and was granted November 12, 1993 [9 FCC Rcd 1019 (1993)]. Public notice period on an amendment to expand the trial to pass 150,000 homes ended January 21, 1994. Three opposition petitions received. (WPC 6858)

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[1] Applications are filed pursuant to the video dialtone order, Second Report and Order, 7 FCC Rcd 5781 (1992).

[2] The use of "homes" means homes-passed (not necessarily actual subscribers) and may include business customers.

[3] Altogether the applications propose to construct facilities that will pass approximately 7,990,000 homes, or 8.8% of the 91.6 million homes with telephones as of March 1993.

4. U S West, Omaha, Nebraska, authorization granted December 22, 1993 [9 FCC Rcd 184 (1993)]. Technical trial to 2500 homes on a non-tariffed basis. Market trial is to 60,000 homes on a tariffed basis. A Petition for Reconsideration has been filed. (WPC 6868)

5. Rochester Telephone, Rochester, New York, amended application for a technical and marketing trial to 120 homes granted with conditions and released 3/25/94, DA 94-275. (WPC 6867)

6. New Jersey Bell Telephone, Florham Park, New Jersey, application under consideration. Pleading cycle completed October 19, 1993. Along with the Dover application, fifty pleadings, including nine oppositions, filed. Also along with the Dover Township application, this is the first application for tariffed permanent commercial service, in this case to 11,700 homes. (WPC 6838)

7. New Jersey Bell Telephone, Dover Township, New Jersey, application under consideration. Pleading cycle completed October 19, 1993. Along with the Florham application, fifty pleadings, including nine oppositions, filed. Also along with the Florham Park application, this is the first application for a tariffed permanent commercial service, in this case to 38,000 homes. (WPC 6840)

8. C&P Telephone, Maryland and Virginia portions of Washington LATA, application under consideration. Public notice period ended February 11, 1994. Three oppositions were filed.[4] Proposal is for a tariffed permanent commercial service. On July 16, 1994, C&P filed an amendment to expand coverage to include portions of Washington, D.C., and portions of Prince Georges and Howard Counties, Maryland. The amendment expands coverage for the entire application to a total of 1.2 million homes-passed. The 30-day public notice period for the amendment begins on June 29, 1994. (WPC 6912)

9. Pacific Bell, Orange County, California, public notice period ended February 11, 1994. Six oppositions were filed.* This application is for a tariffed permanent commercial service to 210,000 homes. (WPC 6913)

10. Pacific Bell, Southern San Francisco Bay, California, public notice period ended February 11, 1994. Six oppositions were filed.* This application is for a tariffed permanent commercial service in the San Jose area to 490,000 homes. (WPC 6914)

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4 * Wherever "opposition filed" is stated, there also may be comments filed in addition to oppositions. Jointly filed oppositions by two or more parties are counted as separate oppositions by each party.

11. Pacific Bell, Los Angeles, California, public notice period ended February 11, 1994. Eight oppositions were filed.* This application is for a tariffed permanent commercial service to 360,000 homes. (WPC 6915)

12. Pacific Bell, San Diego, California, public notice period ended February 11, 1994. Eight oppositions were filed.* This application is for a tariffed permanent commercial service to 250,000 homes. (WPC 6916)

13. U S West, Denver, filed 1/10/94, for a tariffed permanent commercial service to 300,000 homes. Three oppositions were filed.* Public Notice period ended March 4, 1994. (WPC 6919)

14. U S West, Portland, filed 1/24/94, for a tariffed permanent commercial service to 132,000 residential and business customers. Public notice period ended March 4, 1994. Four oppositions were filed.* (WPC 6921)

15. U S West, Minneapolis-St. Paul, filed 1/24/94, for a tariffed permanent commercial service to 292,000 residential and business customers. Public notice period ended March 4, 1994. Four oppositions were filed.* (WPC 6922)

16. Ameritech, Detroit, Michigan, filed January 31, 1994, for a tariffed permanent commercial service to 232,000 homes. Public notice period ended March 11, 1994. Six oppositions filed. (WPC 6926)

17. Ameritech, Columbus and Cleveland, Ohio, filed January 31, 1994, for a tariffed commercial service to 262,000 homes. Public notice period ended March 11, 1994. Six oppositions were filed.* (WPC 6927)

18. Ameritech, Indianapolis, Indiana, filed January 31, 1994, for a tariffed permanent commercial service to 115,000 homes. Public notice period ended March 11, 1994. Six oppositions were filed.* (WPC 6928)

19. Ameritech, Chicago, Illinois, filed January 31, 1994, for a tariffed permanent commercial service to 501,000 homes. Public notice period ended March 11, 1994. Six oppositions were filed.* (WPC 6929)

20. Ameritech, Milwaukee, Wisconsin, for a tariffed permanent commercial service to 146,000 homes. Public notice period ended March 11, 1994. Six oppositions were filed.* (WPC 6930)

21. U S West, Boise, Idaho, for a tariffed permanent commercial service to 90,000 homes. Public notice period ends April 22, 1994. (WPC 6944)

22. U S West, Salt Lake City, Utah, for a tariffed permanent commercial service to 160,000 homes. Public notice period ends April 22, 1994. (WPC 6945)

23. Puerto Rico Telephone Company technical trial to 380 customers. Public notice period ends May 20, 1994. (WPC 6949)

24. Contel of Virgina, Inc., doing business as GTE Virginia, for service in Manassas, Virginia. Thirty-day public notice period begins June 2, 1994. Commercial service to 90,000 homes passed. (WPC 6955)

25. GTE Florida for service in Pinellas County and Pasco County (near Tampa/St. Petersburg), 30-day public notice period begins June 2. Commercial service to 476,000 homes passed. (WPC 6956)

26. GTE California, for service in Ventura County, CA., 30-day public notice period begins June 2. Commercial service to 122,000 homes passed. (WPC 6957)

27. GTE Hawaiian Telephone Company, for service in Honolulu, Hawaii area, 30-day public notice period begins June 2. Commercial service to 296,000 homes passed. (WPC 6958)

28. Bell Atlantic, for authority to provide commercial video dialtone service in the five areas of (1) Baltimore, (2) Northern New Jersey, (3) Philadelphia/Delaware Valley, (4) Pittsburgh, and (5) Virginia Beach/Norfolk/Hampton, Virginia. In all, the proposals cover 2 million homes-passed. The 30-day public notice period begins June 29, 1964. (WPC 6966)

ATTACHMENT B

Concentration in the Market for Cable Television

A market is considered concentrated when one firm, or a small number of firms, has a sufficient share of the market to exercise power over it. The prevailing measure of market concentration, and the one used by the Department of Justice, is the Herfindahl-Hirschman Index (HHI). The HHI, which is calculated by summing the squares of the market shares of the firms in the market, reflects the market share distribution among all firms in the market, giving proportionately greater weight to the market shares of the larger firms. The Department of Justice considers market power to exist when the HHI reaches 1,000.[1]

Current data on the market share of cable television multiple system operators (MSOs) show a market that is unconcentrated. Applying the HHI analysis to the top twenty-five cable television MSOs[2] results in an HHI of 577, well below the Department of Justice's threshold of 1,000.

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[1]Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, April 1992, p. 28. The Guidelines divides the spectrum of market concentration into three regions: unconcentrated when the market's HHI is below 1,000; moderately concentrated when the HHI is between 1,000 and 1,800; and highly concentrated when the HHI is above the level of 1,800. The maximum HHI level attainable is 10,000, which represents a pure monopoly situation (one firm with 100 percent of the market = 100 x 100).

[2]In its Merger Guidelines, the Department of Justice states that although it is desirable to include all market firms in the HHI calculation, small fringe firms do not affect the HHI significantly and therefore are not critical. Only the top 25 cable companies were used here because beyond the 25 largest, each smaller company captures less than one percent of the market, and thus the square of a number less than one will have little impact on the value of the index. The top 25 cable companies serve approximately 45 million cable subscribers, or about 75 percent of the nation's subscribers.

Cable Market Concentration and Herfindahl-Hirschman Index (HHI)

Company	Total Subscribers	Market Share	HHI Value
Tele-Communications, Inc. [1]	10,484,060	17.67%	312.29
Time Warner Cable [2]	7,232,000	12.19	148.60
Continental Cablevision [3]	2,917,000	4.92	24.21
Comcast [4,5]	2,657,000	4.48	20.07
Cablevision Systems Corp.	2,155,000	3.63	13.18
Cox Cable Communications [5]	1,790,000	3.02	9.12
Newhouse Broadcasting	1,388,000	2.34	5.48
Cablevision Industries	1,327,000	2.24	5.02
Times Mirror Cable	1,280,000	2.16	4.67
Jones Spacelink	1,261,000	2.13	4.54
Adelphia Communications	1,250,000	2.11	4.45
Viacom	1,096,000	1.85	3.42
Falcon Cable TV	1,093,000	1.84	3.39
Sammons Communications	1,072,000	1.81	3.28
Century Communications	952,000	1.60	2.56
Crown Media	858,000	1.45	2.10
Colony Communications	791,000	1.33	1.77
TeleCable Corp.	719,000	1.21	1.46
Scripps Howard	704,000	1.19	1.42
Lenfest Communications	666,000	1.12	1.25
InterMedia Partners	634,000	1.07	1.14
KBLCOM	606,000	1.02	1.04
TKR Cable	602,000	1.01	1.02
Prime Cable	563,000	0.95	0.90
Post-Newsweek Cable	483,000	0.81	0.66
Top Twenty Five	**44,580,060**	**75.14%**	**577.04** [6]

Source: Paul Kagan Associates, Inc., *Cable TV Investor*, May 18, 1994, p. 13, data as of January 31, 1994. Tele-Communications, Inc. data from Tele-Communications, Inc. Total industry subscribers, February 1994, 59,332,200 from A.C. Nielsen.

Notes:

(1) Tele-Communications, Inc. subscriber data includes customers served by TCI and its consolidated subsidiaries. The subscriber data does not reflect cable companies in which TCI has an interest accounted for by the equity or cost methods. If all of TCI's interests are included, TCI would have approximately 13,487,040 subscribers, or 22.73 percent of the market, and the HHI would be 781.

(2) Includes 100 percent of affiliated systems.

(3) Includes 34 percent of Insight Communications.

(4) Includes Comcast's share of Storer.

(5) Comcast has agreed to acquire Maclean Hunter's U.S. cable systems. If the acquisition is completed, Comcast would have approximately 3,088,000 subscribers, or 5.20 percent of the market. Additionally, Cox Cable Communications and Times Mirror Cable have agreed to merge. If the merger is completed, the merged company would have approximately 3,070,000 subscribers, or 5.17 percent of the market. After both transactions, the HHI would be 596.95. If all of TCI's interests are included (see footnote 1), the HHI would be 801.31.

(6) In its Merger Guidelines, the Department of Justice states that although it is desirable to include all market firms in the HHI calculation, small fringe firms do not affect the HHI significantly and therefore are not critical. Only the Top 25 cable companies were used here because beyond the 25 largest, each smaller company captures less than one percent of the market, and thus the square of a number less than one will have little impact on the value of the index. The top 25 cable companies serve approximately 45 million subscribers, or about 75 percent of the nation's subscribers.

June 21,1994

ATTACHMENT C

CABLE NETWORK CARRIAGE ANALYSIS UPDATE

ECONOMISTS INCORPORATED

JUNE 28, 1994

CABLE NETWORK CARRIAGE ANALYSIS UPDATE

On May 19, 1994, the Commission released a *Notice of Inquiry* (*"NOI"*) seeking information necessary to comply with statutory requirements contained in the Cable Television Consumer Protection and Competition Act of 1992. One of the stated purposes of the *NOI* was to update the information contained in Appendix G of the Commission's 1990 Cable Report to Congress with respect to horizontal ownership levels and vertical integration.[1]

This paper provides the information necessary to update some of the tables pertaining to vertical integration in the cable industry contained in Appendix G of the 1990 Report. In particular, the paper provides updated versions of Tables IV, V, VII, VIII, XIII, and XIV.[2]

The original information in these tables was based on a report by Benjamin Klein.[3] The Klein study was compiled based on information obtained in 1988 and 1989. This paper applies the methodology used in the Klein study to data current as of June 1994.

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1 *Competition, Rate Deregulation and the Commission's policies Relating to the Provision of Cable television Service*, MM Docket No. 89-600, 5 FCC Rcd 4962 (1990) ("1990 Report")

2 Tables I, II, and III of Appendix G of the 1990 Report deal with concentration of subscribers among the top MSOs. There are several public sources that have already compiled this information, including *Cable Television Developments* published by NCTA, April 1994, and the March 14, 1994 issue of Cablevision at 66. Table VI presents information on the percentages of attributable ownership by MSOs in various cable networks. This information was originally obtained in response to letters sent by the Commission to the individual MSOs. Tables IX, X, XI, and XII concern carriage by MMDS and SMATV systems, and rates paid by those systems for cable networks. This information was obtained from individual operators and the Wireless Cable Association. Finally, Table XV presented a chronology of major MSO cable network ownership. This information also was obtained from MSOs in response to letters sent by the Commission.

3 Benjamin Klein, "The Competitive Consequences of Vertical Integration in the Cable Industry," June 1989 ("Klein study").

The paper finds that while vertically integrated MSOs tend to carry programming in which they have an ownership or equity interest more frequently than other MSOs, it also finds that they carry non-affiliated programming to a greater degree. Moreover, the differential carriage percentage of non-affiliated programming has increased over what it was five years ago.

The average differential carriage percentage of vertically integrated networks on systems with ownership interests relative to systems without ownership interests is 15.9 percent. This result is very similar to the result reported in the 1990 Report, in which the average differential carriage percentage equaled 15.3 percent.

The average differential carriage percentage by those of the top four vertically integrated MSOs that have no ownership interests in each of the largest 20 basic and 8 premium networks relative to cable systems that have no ownership interest in any network is 10.6 percent, as compared to a 5.2 percent carriage differential reported in the 1990 Report.

Ownership Analysis

Tables 1 and 2 list the national satellite delivered cable programming networks currently available to cable operators and when the network began service. Table 1 lists those networks with a cable operator ownership or equity interest. [This corresponds to Table IV of Appendix G of the 1990 Report.] Table 2 lists those networks with no cable operator ownership or equity interest. [This corresponds to Table V of Appendix G of the 1990 Report.]

As was the case in 1990, there are a significant number of cable networks that have no ownership links with MSOs. Among these are several highly rated networks including Arts & Entertainment Network, CNBC, ESPN, Lifetime, The Disney Channel, The Weather Channel, and WGN.

Table 3 lists the vertical connection, if any, between the largest (in terms of subscribership) cable programming networks and MSOs. The table lists the 25 largest basic programming networks and the eight largest premium networks,[4] the number of subscribers to each network, and any MSO with an ownership of equity interest in each of the networks. All non-MSO ownership interests in the networks are ignored. [This corresponds to Table VII of Appendix G of the 1990 Report.]

Table 4 lists the vertical connection, if any, between the highest rated cable networks and MSOs. The table lists the 15 highest (prime time) rated basic networks and any MSO with an ownership or equity interest in each of the networks. All non-MSO ownership interests in the networks are ignored. [This corresponds to Table VIII of Appendix G of the 1990 Report.]

Carriage Analysis

In order to study carriage rates of cable networks by vertically integrated and nonvertically integrated cable systems, the Klein study examined cable programming carriage by cable operators for a stratified random sample of 400 cable systems in the United States. Instead of going back to the original Klein study's sample, or generating a new sample, this analysis uses the random sample of systems selected by the Commission as part of its survey of September 1992 rates and the sample of systems selected by the Commission as part of its survey of September 1993 rates.

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4 This list is substantially the same as the list in the Klein study. Among basic networks, four of the top 20 networks have changed. Nickelodeon and Nick at Nite are now considered one network rather than two as in the Klein study. In addition, the Financial News Network and Cable Value Network are no longer in existence. WGN has slipped below the top 20. These four networks have been replaced by Turner Network Television ("TNT"), CNBC, QVC, and American Movie Classics.

Among premium services, there have been two changes. Both American Movie Classics and Galavision have become basic services. They have been replaced by Encore and Flix.